

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TUFAMERICA, INC., :
Plaintiff, : Index No.:
v. : 12-CIV-3529 (AJN)
MICHAEL DIAMOND, et al., :
Defendants. :

-----x

Videotaped Deposition of JAMES WILLIAM AVERY, Ph.D.

Washington, DC

Wednesday, April 30, 2014

11:18 a.m.

Reported By: Lee Bursten, RMR, CRR

<p style="text-align: right;">Page 2</p> <p>1 Videotaped Deposition of JAMES WILLIAM 2 AVERY, Ph.D., held at the offices of: 3 4 5 JENNER & BLOCK LLP 6 1099 New York Avenue NW 7 Suite 900 8 Washington, DC 20001 9 (202) 639-6000 10 11 12 13 14 Pursuant to Notice, before Lee Bursten, 15 Registered Merit Reporter, Certified Realtime 16 Reporter, and Notary Public in and for the District 17 of Columbia, who officiated in administering the oath 18 to the witness. 19 20 21 22</p>	<p style="text-align: right;">Page 4</p> <p>1 A P P E A R A N C E S C O N T I N U E D 2 ON BEHALF OF DEFENDANTS MICHAEL DIAMOND, ADAM 3 HOROVITZ, AND THE ESTATE OF ADAM YAUCH, PERFORMERS 4 KNOWN AS THE BEASTIE BOYS: 5 THEODORE C. MAX, ESQUIRE 6 SHEPPARD MULLIN RICHTER & HAMPTON LLP 7 30 Rockefeller Plaza 8 New York, New York 10112 9 (212) 653-8700 10 11 ALSO PRESENT: 12 MICHAEL E. CILIBERTI, Videographer 13 14 15 16 17 18 19 20 21 22</p>
<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S 2 ON BEHALF OF PLAINTIFF AND THE WITNESS: 3 KELLY D. TALCOTT, ESQUIRE 4 THE LAW OFFICES OF KELLY D. TALCOTT 5 34 Grove Street 6 P.O. Box 43 7 Sea Cliff, New York 11579 8 (516) 515-1545 9 10 ON BEHALF OF DEFENDANTS UMG - POLYGRAM INTERNATIONAL 11 PUBLISHING INC. and CAPITOL RECORDS LLC: 12 ANDREW H. BART, ESQUIRE 13 JENNER & BLOCK LLP 14 919 Third Avenue 15 37th Floor 16 New York, New York 10022 17 (212) 891-1600 18 19 20 21 22</p>	<p style="text-align: right;">Page 5</p> <p>1 C O N T E N T S 2 EXAMINATION OF JAMES WILLIAM AVERY, Ph.D. PAGE 3 By Mr. Bart 8 4 By Mr. Max 213 5 6 E X H I B I T S 7 (Attached to transcript) 8 DEFENDANTS' DEPOSITION EXHIBITS PAGE 9 Exhibit 1 Letter of Engagement 16 10 Exhibit 2 10/11/84 letter agreement 20 11 between Island Records and 12 T.T.E.D. Records 13 Exhibit 3 Exhibit "A": Letter of 20 14 Inducement, 10/11/84 15 Exhibit 4 Exclusive Recording Agreement, 23 16 10/11/84 17 Exhibit 5 Form PA, Registration Number PA 23 18 298 628 19 Exhibit 6 Form PA, Registration Number PA 24 20 298-633 21 Exhibit 7 Certificate of Recordation, 24 22 7/28/86</p>

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<p style="text-align: right;">Page 18</p> <p>1 A I did not have these documents in my 2 possession. 3 Q Did you review them in preparation for your 4 deposition? 5 A Yes. 6 Q May I see the folder, please. 7 A The documents that I -- 8 Q Yes. 9 A -- that I had? 10 Q Unless there's other material -- 11 A There's other material in here. This is my 12 work-related material. 13 Q When you say "work," you mean your work for 14 the EPA? 15 A Not in this folder. I'm saying in my -- 16 Q No, I'm talking about the manila folder 17 that you have in front of you right now. Does that 18 consist solely of documents that you received 19 relating to this case? 20 A Yes. 21 Q May I see the folder, please? 22 MR. TALCOTT: He can just give it...</p>	<p style="text-align: right;">Page 20</p> <p>1 A Taylor Reed. 2 Q And when did Taylor Reed give you these 3 documents? 4 A Two days ago. 5 Q Did you have copies of either of these two 6 documents? 7 A No. 8 MR. BART: Let's mark as Defendants' Avery 9 Exhibit 2 a document dated October 11th, 1984, 10 between Island Records and T.T.E.D. Records. And as 11 Exhibit 3, a document marked "Letter of Inducement" 12 of that same date. 13 (Defendants' Exhibit 2 and Exhibit 3 were 14 marked for identification and attached to the 15 deposition transcript.) 16 BY MR. BART: 17 Q Mr. Avery, let me show you first the 18 document which we've now marked as Defendants' Avery 19 Exhibit 2, and ask you if you can identify that 20 document for me. 21 A This document was given to me by Taylor 22 Reed.</p>
<p style="text-align: right;">Page 19</p> <p>1 MR. BART: He can give them one at a time. 2 I just thought it made more sense for me to mark them 3 collectively. 4 BY MR. BART: 5 Q Is that the full contents of the folder? 6 A Yes. 7 Q There are more documents inside there? 8 A Those were the documents given by 9 Mr. Talcott. 10 Q What were the other materials? 11 A Those are my personal materials. 12 Q Do they relate to this case? 13 A Yes. 14 Q Okay. May I see them, please. 15 A These are just copies of the document that 16 I gave you. 17 Q Thank you. Let me deal with what you just 18 handed me first. You handed me two documents that 19 you said were part of your personal papers, correct? 20 A They are -- they are documents that were 21 given to me. 22 Q By whom were they given to you?</p>	<p style="text-align: right;">Page 21</p> <p>1 Q Yes. Had you ever seen that document 2 before Mr. Reed gave it to you? 3 A I did not recall it until he gave it to me. 4 Q And once he gave it to you, did you recall 5 it? 6 A No, I did not. 7 Q Okay. And did you have a copy of this 8 document prior to getting a copy from Mr. Reed? 9 A No. 10 Q And sitting here today, do you have a 11 recollection of having seen that document before 12 getting it from Mr. Reed? 13 A No, I did not. 14 Q Can you state under oath that you never saw 15 it, or is it your testimony that you don't recall 16 whether you saw it or not? 17 A I don't recall. 18 Q Okay. Let me put in front of you a 19 document marked Avery Exhibit 3 and ask you to 20 identify that document for me. 21 A This is a document that I received from 22 Taylor Reed.</p>

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<p style="text-align: right;">Page 22</p> <p>1 Q And can you identify that document? What</p> <p>2 is it?</p> <p>3 A The title of this document is "Exhibit A:</p> <p>4 Letter of Inducement."</p> <p>5 Q Have you seen that document before?</p> <p>6 A This document I've seen before.</p> <p>7 Q And you signed that document, didn't you?</p> <p>8 A I did.</p> <p>9 Q And you signed it at or about the time</p> <p>10 that's reflected on that agreement, correct?</p> <p>11 A That I do not recall.</p> <p>12 Q But you did sign the document, correct?</p> <p>13 A I signed -- my signature is on page 31 of</p> <p>14 this document.</p> <p>15 Q Can I see that for one second? Here, you</p> <p>16 can have that in front of you, Mr. Avery.</p> <p>17 A Okay.</p> <p>18 Q Your signature is the first signature on</p> <p>19 page 31 of that document, correct?</p> <p>20 A Yes.</p> <p>21 Q Do you recognize the signatures of any of</p> <p>22 the other people on that page?</p>	<p style="text-align: right;">Page 24</p> <p>1 transcript.)</p> <p>2 MR. BART: As Exhibit 6, a copyright</p> <p>3 certificate bearing Bates stamps UMG 156 to 159.</p> <p>4 (Defendants' Exhibit 6 was marked for</p> <p>5 identification and attached to the deposition</p> <p>6 transcript.)</p> <p>7 MR. BART: As 7, a certificate from the</p> <p>8 Copyright Office bearing UMG 163 to 166.</p> <p>9 (Defendants' Exhibit 7 was marked for</p> <p>10 identification and attached to the deposition</p> <p>11 transcript.)</p> <p>12 MR. BART: Whatever the next Exhibit Number</p> <p>13 is, 8, UMG 160 to 162.</p> <p>14 (Defendants' Exhibit 8 was marked for</p> <p>15 identification and attached to the deposition</p> <p>16 transcript.)</p> <p>17 MR. BART: And 9, UMG 172 and 3.</p> <p>18 (Defendants' Exhibit 9 was marked for</p> <p>19 identification and attached to the deposition</p> <p>20 transcript.)</p> <p>21 MR. BART: Excuse me for just one second.</p> <p>22 THE VIDEOGRAPHER: Going off the record.</p>
<p style="text-align: right;">Page 23</p> <p>1 A I don't recognize the signature. I</p> <p>2 recognize -- no, I don't recognize the signatures.</p> <p>3 Q Do you recognize the signature at the</p> <p>4 bottom middle of the page on the left side?</p> <p>5 A I don't recognize the signatures. I can</p> <p>6 read them, but I don't recognize them.</p> <p>7 Q Okay. Fair enough. May I have that</p> <p>8 document back? Thank you. Now, in addition, you</p> <p>9 produced or you gave to me at my request certain</p> <p>10 documents that Mr. Talcott gave to you.</p> <p>11 A Yes.</p> <p>12 MR. BART: Let me mark those as well. I'll</p> <p>13 mark as Exhibit 4 an October 11th, 1984 document</p> <p>14 titled "Exclusive Recording Agreement."</p> <p>15 (Defendants' Exhibit 4 was marked for</p> <p>16 identification and attached to the deposition</p> <p>17 transcript.)</p> <p>18 MR. BART: We'll mark as Exhibit 5 a</p> <p>19 copyright registration form bearing Bates stamps UMG</p> <p>20 152 through 155.</p> <p>21 (Defendants' Exhibit 5 was marked for</p> <p>22 identification and attached to the deposition</p>	<p style="text-align: right;">Page 25</p> <p>1 The time is 11:40.</p> <p>2 (Recessed at: 11:40 a.m.)</p> <p>3 (Reconvened at: 11:44 a.m.)</p> <p>4 THE VIDEOGRAPHER: Back on the record. The</p> <p>5 time is 11:44.</p> <p>6 BY MR. BART:</p> <p>7 Q Mr. Avery, right before the break, we</p> <p>8 marked a series of documents. And the first of those</p> <p>9 -- these are the documents that you received from</p> <p>10 Mr. Talcott. Let me put back in front of you what's</p> <p>11 been marked as Exhibit 4, which is titled "Exclusive</p> <p>12 Recording Agreement," with a date of 10/11/84.</p> <p>13 Mr. Avery, prior to receiving that document</p> <p>14 from Mr. Talcott, did you ever see that document</p> <p>15 before?</p> <p>16 A This exact document, I do not recall if</p> <p>17 this is the exact document. I have seen -- I don't</p> <p>18 know if this is the exact document. I've seen a</p> <p>19 document similar to this one.</p> <p>20 Q Okay. But you've seen a document similar</p> <p>21 to that, and you can't testify under oath today</p> <p>22 whether that's the same one that you have in front of</p>

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<p style="text-align: right;">Page 26</p> <p>1 you, correct?</p> <p>2 A No, I cannot.</p> <p>3 Q Okay. Does your signature appear on that</p> <p>4 document?</p> <p>5 A My signature appears on page 18 of this</p> <p>6 document.</p> <p>7 Q Okay. Thank you. We'll come back and deal</p> <p>8 with all of these. I'm really just marking what you</p> <p>9 received for right now. The next document that we</p> <p>10 marked was a copyright certificate bearing Bates</p> <p>11 stamps UMG 152 to 155. Well, first off, there are a</p> <p>12 whole series of copyright documents that we marked</p> <p>13 here as Exhibits 5 through 8.</p> <p>14 Had you ever seen any of them before?</p> <p>15 A No.</p> <p>16 Q Okay. Then we'll just deal with them in</p> <p>17 the ordinary course. These are documents that you</p> <p>18 received from Mr. Talcott recently, correct?</p> <p>19 A Yes.</p> <p>20 Q Okay.</p> <p>21 A These -- clarification. These documents,</p> <p>22 when you say "these," which --</p>	<p style="text-align: right;">Page 28</p> <p>1 A With regard to music production and</p> <p>2 advising me with regard to music production.</p> <p>3 Q When was the first time that you had a</p> <p>4 conversation with Mr. Talcott?</p> <p>5 A I don't remember the first conversation.</p> <p>6 Q Was it this year?</p> <p>7 A Further back than this year.</p> <p>8 Q Okay. And was it relating to this</p> <p>9 particular lawsuit?</p> <p>10 A No.</p> <p>11 Q What subject matter did it relate to?</p> <p>12 A With regard to my signing with Tuff City to</p> <p>13 represent me and services for copyright</p> <p>14 infringements.</p> <p>15 MR. BART: Let me mark as Exhibit 10 -- let</p> <p>16 me do one thing just to make sure I don't lose track</p> <p>17 here. Let me mark this document as Defendants' Avery</p> <p>18 Exhibit 10. It's a document bearing Bates stamps TA</p> <p>19 158 through 160.</p> <p>20 (Defendants' Exhibit 10 was marked for</p> <p>21 identification and attached to the deposition</p> <p>22 transcript.)</p>
<p style="text-align: right;">Page 27</p> <p>1 Q The copyright certificates, the ones that I</p> <p>2 have just been alluding to.</p> <p>3 A Correct.</p> <p>4 Q Let me go back to the retainer agreement.</p> <p>5 If you need to see it again, I'll give it to you.</p> <p>6 It's the only copy I have right now.</p> <p>7 A I don't know what you're referring to.</p> <p>8 Q This is the April 14th, 2014 letter.</p> <p>9 A Okay.</p> <p>10 Q There's a reference at the top to James</p> <p>11 Avery, care of Rasheed M. McWilliams, Esq. Who is</p> <p>12 Mr. McWilliams?</p> <p>13 A Mr. McWilliams is my entertainment</p> <p>14 attorney.</p> <p>15 Q Okay. And how long has he been your</p> <p>16 attorney?</p> <p>17 A I don't know the exact date right now.</p> <p>18 Q For more than ten years?</p> <p>19 A No.</p> <p>20 Q Okay. And when you say your "entertainment</p> <p>21 attorney," generically what types of services does he</p> <p>22 render to you?</p>	<p style="text-align: right;">Page 29</p> <p>1 BY MR. BART:</p> <p>2 Q Mr. Avery, I put in front of you a document</p> <p>3 that I've identified before as bearing Bates stamps</p> <p>4 TA 158 through 160, which states that it is an</p> <p>5 agreement effective dated January 1, 2012. Can you</p> <p>6 identify this document for me?</p> <p>7 A Yes. This is an agreement between myself</p> <p>8 and TufAmerica.</p> <p>9 Q In your previous answer, before I marked</p> <p>10 this exhibit, you referenced conversations or at</p> <p>11 least a conversation with Mr. Talcott about having</p> <p>12 TufAmerica represent your interests with regard to</p> <p>13 copyright infringement matters. Do you recall that</p> <p>14 testimony?</p> <p>15 A Yes, I do recall the testimony.</p> <p>16 Q Were those discussions discussions that</p> <p>17 culminated in the execution of this agreement?</p> <p>18 A You have to clarify, because I don't</p> <p>19 understand what you mean.</p> <p>20 Q Fair enough.</p> <p>21 A That that conversation culminated in this</p> <p>22 agreement.</p>

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<p style="text-align: right;">Page 130</p> <p>1 promoter. That's all I know.</p> <p>2 Q But he was around with the band for several</p> <p>3 years, wasn't he, working with the band in some</p> <p>4 capacity or other?</p> <p>5 A The time that I was there, he didn't come</p> <p>6 until -- that's the only time I seen him, was here</p> <p>7 and when he came to distribute records. That's it.</p> <p>8 Q Well, before you signed with Island</p> <p>9 Records, wasn't Mr. Kidd the person who first</p> <p>10 mentioned to the band the possibility that the band</p> <p>11 could sign with Island Records?</p> <p>12 A Yes.</p> <p>13 Q And do you recall what he told you about</p> <p>14 that?</p> <p>15 A Not exactly. All I know, that there was</p> <p>16 interest in Trouble Funk.</p> <p>17 Q And --</p> <p>18 A And that he was shopping a deal. That's</p> <p>19 all.</p> <p>20 Q Okay. But that's good. That he was</p> <p>21 shopping the deal, that he was out there trying to</p> <p>22 find interest in you signing with a bigger label,</p>	<p style="text-align: right;">Page 132</p> <p>1 that he could shop you around is if you were signed</p> <p>2 to a label of his?</p> <p>3 A No.</p> <p>4 Q Well, did he tell you that he had his own</p> <p>5 record label?</p> <p>6 A No.</p> <p>7 Q Now, earlier this morning -- let me just</p> <p>8 make sure I have this. Hold on. You gave me a</p> <p>9 document I'll give back to you, Exhibit 4. Now, this</p> <p>10 was a document that you said Mr. Talcott gave to you</p> <p>11 to help you prepare for your deposition in this case;</p> <p>12 is that correct?</p> <p>13 A Which document are you referring to?</p> <p>14 Q I just put it -- I gave it to you a second</p> <p>15 ago. Exhibit 4. It's labeled "Exclusive Recording</p> <p>16 Agreement."</p> <p>17 A Oh, okay. Say again about this document.</p> <p>18 Q This is one of the documents that</p> <p>19 Mr. Talcott gave you to help you prepare for this</p> <p>20 deposition, correct? This is one of the documents</p> <p>21 you brought with you today.</p> <p>22 A One of the documents that Mr. Talcott gave</p>
<p style="text-align: right;">Page 131</p> <p>1 correct?</p> <p>2 A Yes.</p> <p>3 Q Okay. Do you know whether he was shopping</p> <p>4 any other bands at the time, other than Trouble Funk?</p> <p>5 A I don't know.</p> <p>6 Q And did you tell him it was okay to shop</p> <p>7 Trouble Funk?</p> <p>8 A I had no say-so in that. I didn't tell him</p> <p>9 anything.</p> <p>10 Q Did other members of the band have any</p> <p>11 say-so, or you don't know?</p> <p>12 A I don't know.</p> <p>13 Q Would either Robert Reed or Tony Fisher be</p> <p>14 more likely in terms of their roles with the band to</p> <p>15 have had those conversations than you?</p> <p>16 A Again, I came in the band -- before the</p> <p>17 band was already started, so I don't know.</p> <p>18 Q Fair enough. But you knew that Maxx Kidd</p> <p>19 said there was interest in Trouble Funk, and that he</p> <p>20 was out shopping the band, correct?</p> <p>21 A That's all.</p> <p>22 Q Okay. And did he tell you that the way</p>	<p style="text-align: right;">Page 133</p> <p>1 me, yes.</p> <p>2 Q And that's your signature on the last page,</p> <p>3 on page 18, correct?</p> <p>4 A Correct.</p> <p>5 Q Okay. Now, the document is entitled</p> <p>6 "Exclusive Recording Agreement," correct? On the</p> <p>7 first page.</p> <p>8 A Correct.</p> <p>9 Q And it has a date of 11 -- October 11th,</p> <p>10 1984, correct?</p> <p>11 A Correct.</p> <p>12 Q And it reflects that it's an agreement</p> <p>13 between four members of the musical group Trouble</p> <p>14 Funk, care of Raphael Tisdale, who you've testified</p> <p>15 before was your attorney at the time, correct?</p> <p>16 A Correct.</p> <p>17 Q And T.T.E.D. Records Inc., correct?</p> <p>18 A Correct.</p> <p>19 Q And you knew in 1984, did you not, that</p> <p>20 T.T.E.D. Records was an entity owned or controlled by</p> <p>21 Maxx Kidd, correct?</p> <p>22 A At the time of this, yes.</p>

<p style="text-align: right;">Page 134</p> <p>1 Q Yes.</p> <p>2 A Yes.</p> <p>3 Q Now, there is handwriting on the copy, on</p> <p>4 this copy of the agreement, correct?</p> <p>5 A Correct.</p> <p>6 Q Okay. And before Mr. Talcott gave you a</p> <p>7 copy of this agreement, you had not seen this</p> <p>8 document since the time you signed page 18; isn't</p> <p>9 that correct?</p> <p>10 A That's correct.</p> <p>11 Q Okay. Now, on page 2 to 3, there is a</p> <p>12 circle around paragraph 1.05.</p> <p>13 A Correct.</p> <p>14 Q Which says that "Only master recordings</p> <p>15 consisting of compositions not previously recorded by</p> <p>16 the artist shall apply in reduction of the recording</p> <p>17 commitment except as otherwise provided herein."</p> <p>18 Do you see that?</p> <p>19 A Yes, I do.</p> <p>20 Q Do you have a recollection sitting here</p> <p>21 today as having read or remembered that paragraph</p> <p>22 from 1984?</p>	<p style="text-align: right;">Page 136</p> <p>1 A No.</p> <p>2 Q Okay. Fair enough. Now, on page 5 of this</p> <p>3 agreement, there's a paragraph, 2.02, that is</p> <p>4 bracketed and has next to it on the right the words</p> <p>5 "James A." Do you see that?</p> <p>6 A Yes.</p> <p>7 Q Taking a wild educated guess, I would take</p> <p>8 it as a reference to you?</p> <p>9 A I do not know.</p> <p>10 Q That's not your handwriting?</p> <p>11 A That's not my handwriting.</p> <p>12 Q And you don't have any recollection sitting</p> <p>13 here today of any issues or concerns or discussion</p> <p>14 about that paragraph, do you?</p> <p>15 A No.</p> <p>16 Q Okay. There's also, on the bottom of that</p> <p>17 same page, a squiggly line under the number 15,000,</p> <p>18 for \$15,000. Do you see that?</p> <p>19 A Yes.</p> <p>20 Q Do you recall any discussion or -- any</p> <p>21 discussion about a \$15,000 advance as part of this</p> <p>22 agreement?</p>
<p style="text-align: right;">Page 135</p> <p>1 A No.</p> <p>2 Q And just to be clear, and I should have</p> <p>3 addressed this earlier, you don't have any legal</p> <p>4 training, do you?</p> <p>5 A No.</p> <p>6 Q Okay. And you haven't studied contracts or</p> <p>7 interpretation of contracts in any of your many</p> <p>8 educational pursuits?</p> <p>9 A Say again.</p> <p>10 Q Have you ever taken a business law course</p> <p>11 or taken --</p> <p>12 A Oh, no.</p> <p>13 Q -- a course which deals with the</p> <p>14 interpretation of contracts?</p> <p>15 A I am a -- we have to have that kind of --</p> <p>16 this is dealing with scientific contracts at EPA,</p> <p>17 it's what's called contract to office representative,</p> <p>18 but not a contractor, but as the technical expert,</p> <p>19 you have to have basic training, but not legal</p> <p>20 training.</p> <p>21 Q And certainly you didn't have that training</p> <p>22 back in 1984, correct?</p>	<p style="text-align: right;">Page 137</p> <p>1 A Not as part of that agreement. The only</p> <p>2 thing I remember about \$15,000 is in the -- in the</p> <p>3 one that I told you where I knew that my signature,</p> <p>4 strikeouts and initials, any time I strike out or</p> <p>5 write anything, it has my initials.</p> <p>6 Q So that's the letter of inducement?</p> <p>7 A Letter of inducement.</p> <p>8 Q So that letter has \$15,000 also; is that</p> <p>9 correct?</p> <p>10 A It does reference \$15,000.</p> <p>11 Q Now, on the next page, page 6 of this</p> <p>12 exhibit, there's handwriting to the right of the</p> <p>13 first half of the page. Do you see that?</p> <p>14 A Yes, I do.</p> <p>15 Q Do you know whose handwriting that is?</p> <p>16 A No, I do not.</p> <p>17 Q Okay. Do you have any recollection of any</p> <p>18 discussion about that handwriting from 1984?</p> <p>19 A No.</p> <p>20 Q Do you know whether any of the handwriting</p> <p>21 on this document existed on this document in 1984?</p> <p>22 A I do not know.</p>

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<p style="text-align: right;">Page 138</p> <p>1 Q And you don't have any understanding as to</p> <p>2 why any of the bracketed handwriting appears on this</p> <p>3 document; isn't that correct?</p> <p>4 A No.</p> <p>5 Q It is correct that you don't have a</p> <p>6 recollection?</p> <p>7 A I don't have a recollection.</p> <p>8 Q Okay. Fair enough. All right. We can put</p> <p>9 that agreement to the side. Let's take a look at the</p> <p>10 letter of inducement that you gave me, which I put</p> <p>11 somewhere and I have to find.</p> <p>12 MR. MAX: It's 11.</p> <p>13 MR. BART: It's 11. Thank you. There we</p> <p>14 go. No, it's not. You were trying to trick me.</p> <p>15 MR. MAX: I'm sorry.</p> <p>16 MR. BART: It's all right. I'm out of</p> <p>17 order here. So let me find out why I go from 1 to --</p> <p>18 you know what, did I give you back Exhibit 2, by any</p> <p>19 chance?</p> <p>20 A No.</p> <p>21 BY MR. BART:</p> <p>22 Q Do you have Exhibit 2 there?</p>	<p style="text-align: right;">Page 140</p> <p>1 here today of having read this document back in 1984?</p> <p>2 A Yes.</p> <p>3 Q Okay. And do you recall any discussions</p> <p>4 that you had with anyone at that time about this</p> <p>5 agreement?</p> <p>6 A Yes, with our attorney.</p> <p>7 Q Okay. All right. I assume that you're</p> <p>8 claiming attorney-client privilege with regard to</p> <p>9 your conversations with your attorney about this</p> <p>10 agreement, correct?</p> <p>11 A Yes.</p> <p>12 Q Okay. Now, the first paragraph of the</p> <p>13 agreement -- well, let me ask you a different</p> <p>14 question. Do you recall what if any sections of this</p> <p>15 letter of inducement you discussed with your</p> <p>16 attorney?</p> <p>17 A Discussed the whole thing. I think --</p> <p>18 Q Okay.</p> <p>19 A -- we discussed the whole...</p> <p>20 Q Fair enough. You'll see in the -- hold on</p> <p>21 a second. I'm sorry. Let me take you back to</p> <p>22 Exhibit 4 for one second, if I can. That's the one</p>
<p style="text-align: right;">Page 139</p> <p>1 A No.</p> <p>2 Q You don't have the one that says "Letter of</p> <p>3 Inducement"?</p> <p>4 A It says 11, 4, 3.</p> <p>5 Q Which is 3?</p> <p>6 A Letter of inducement.</p> <p>7 Q Okay. Let's deal with that. So you recall</p> <p>8 this exhibit, correct?</p> <p>9 A Correct.</p> <p>10 Q We've testified -- you testified about</p> <p>11 this, and it bears your signature on page 31,</p> <p>12 correct?</p> <p>13 A Correct.</p> <p>14 Q And it has the names of the three other</p> <p>15 members -- or three other members of the band and a</p> <p>16 reference to your attorney, Mr. Tisdale, correct?</p> <p>17 A Where is the reference?</p> <p>18 Q Right under the names on page 31. "Care</p> <p>19 of," typed in, "Raphael Tisdale, Esquire," with a</p> <p>20 street address.</p> <p>21 A Yes.</p> <p>22 Q Now, do you have a recollection sitting</p>	<p style="text-align: right;">Page 141</p> <p>1 that's labeled "Exclusive Recording Agreement." Do</p> <p>2 you have that back in front of you?</p> <p>3 A Yes.</p> <p>4 Q And this agreement, if you turn to page --</p> <p>5 to the bottom of the first page.</p> <p>6 A Yes.</p> <p>7 Q Says, in paragraph 1.02-B, there's a</p> <p>8 sentence --</p> <p>9 A Wait a minute.</p> <p>10 Q On the first page of the exclusive</p> <p>11 recording agreement.</p> <p>12 A Okay.</p> <p>13 Q The last full paragraph on the first page.</p> <p>14 A Mm-hmm.</p> <p>15 Q It starts with the letter B.</p> <p>16 A Mm-hmm.</p> <p>17 Q And five lines from the bottom it says,</p> <p>18 "Each option shall be exercised by company, giving</p> <p>19 you written notice at least 30 days prior to the</p> <p>20 expiration of the then-term of this agreement as the</p> <p>21 same may have been suspended or extended as provided</p> <p>22 herein."</p>

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<p style="text-align: right;">Page 154</p> <p>1 even testify under oath that any handwriting on this 2 document was on the document at the time you signed 3 the agreement? 4 A I don't know. 5 Q Correct? 6 A I don't know. 7 Q Okay. 8 A I don't remember. 9 Q Okay. So based on what you do know, based 10 on your recollection sitting here today, and the fact 11 that you can't testify under oath that any of the 12 handwriting on pages 1 through 17 were even on the 13 document when you signed it, there is nothing on this 14 document that you can point to as any indication that 15 this wasn't an authentic document, is there? 16 MR. TALCOTT: Objection. 17 BY MR. BART: 18 Q You can answer the question. 19 A I don't know if it's an authentic document 20 or not. 21 Q Right. But my question is, there's nothing 22 on this document that you can point to and say, "Look</p>	<p style="text-align: right;">Page 156</p> <p>1 Q Yes. The first paragraph. We were just 2 reading this a few minutes ago. 3 A Mm-hmm. 4 Q "I hereby acknowledge that producer, Maxx 5 Kidd" -- 6 A What line? 7 Q It's the third line of the first paragraph. 8 A Exhibit 3? 9 Q Yes. That's the letter of inducement. You 10 have that? 11 A This is Exhibit 3. It says "Letter of 12 Inducement." 13 Q Yes, that's right. 14 MR. TALCOTT: Which line? 15 BY MR. BART: 16 Q The third line. It's a sentence towards 17 the right that starts, "I hereby acknowledge." 18 A Okay. 19 Q "That producer," and that's T.T.E.D. 20 Records, correct? Or it says so on the second line. 21 A Mm-hmm. 22 Q "Is entering into a record production</p>
<p style="text-align: right;">Page 155</p> <p>1 at that, that's the reason why I don't think this is 2 authentic," is there? 3 MR. TALCOTT: Objection. 4 BY MR. BART: 5 Q You can answer the question. 6 A I don't know. 7 Q Okay. And with regard to Exhibit 2, it's 8 similarly true that there's nothing about this 9 document that you can point to and say that this was 10 not the final production agreement between Island 11 Records and T.T.E.D. Records, is there? 12 MR. TALCOTT: Objection. 13 A I have no idea what agreement Maxx made 14 with Island Records. 15 BY MR. BART: 16 Q Well, you signed a document where you 17 represented to Island Records that you did know what 18 the terms of his agreement were, didn't you? Take a 19 look at Exhibit 3, and the first paragraph of that. 20 Do you have Exhibit 3? I'll wait until you have it 21 in front of you. 22 A 3.</p>	<p style="text-align: right;">Page 157</p> <p>1 agreement with you to which the foregoing letter of 2 inducement is attached (the production agreement), a 3 copy of which I have received, read, and understood." 4 Do you see that language? 5 A Yes. 6 Q And so in signing this document, which you 7 did sign on page 31, which you've testified about 8 before, you were representing to Island Records that 9 the production agreement between T.T.E.D. and Island 10 is a document that you have received, read, and 11 understood, correct? 12 A It is correct that I signed this document, 13 but I just don't recall this particular agreement. 14 Q Okay. And you may not recall the 15 agreement, and that's fine. It's 30 years later, 16 Mr. Avery, and I accept that. All I'm trying to 17 establish is there's nothing about the document that 18 has been marked as Exhibit 2 or Exhibit 3 that gives 19 you any reason to doubt and to tell me under oath 20 that the production agreement was not the agreement 21 signed between Island and T.T.E.D., is there? 22 MR. TALCOTT: Objection.</p>

<p style="text-align: right;">Page 158</p> <p>1 BY MR. BART:</p> <p>2 Q You can answer the question.</p> <p>3 A I don't know.</p> <p>4 Q Okay. All you can tell me is what you</p> <p>5 know.</p> <p>6 A Yes, I don't know.</p> <p>7 Q Okay. Fair enough. Now, in this letter of</p> <p>8 inducement, and again, this is a letter of inducement</p> <p>9 that you discussed and were represented by</p> <p>10 Mr. Tisdale with relation to, correct?</p> <p>11 A Correct.</p> <p>12 Q Okay. And it says in paragraph 1-A that</p> <p>13 "The producer has the right to enter into the</p> <p>14 production agreement and to assume all the</p> <p>15 obligations, warranties, and undertakings to you on</p> <p>16 the part of the producer therein contained."</p> <p>17 Do you see that language?</p> <p>18 A Yes.</p> <p>19 Q And this is your representation to Island</p> <p>20 Records as part of the letter of inducement, correct?</p> <p>21 MR. TALCOTT: Objection.</p> <p>22 BY MR. BART:</p>	<p style="text-align: right;">Page 160</p> <p>1 say that this is the agreement that I signed. But I</p> <p>2 recall signing an agreement. And what I recall, that</p> <p>3 there were -- after we signed, that there were no</p> <p>4 errors, that Tisdale Funk was not in it.</p> <p>5 Q You said that when you made changes to an</p> <p>6 agreement, you would cross it out and initial it,</p> <p>7 correct?</p> <p>8 A Right.</p> <p>9 Q And that's what happened here, correct?</p> <p>10 A Lines -- there are some strikeouts and</p> <p>11 initials --</p> <p>12 Q There's one paragraph that's struck out.</p> <p>13 There's not lines. There's one paragraph that's</p> <p>14 taken out. And you each initialed it, correct?</p> <p>15 A Correct.</p> <p>16 Q Okay. And the reason that that paragraph</p> <p>17 is taken out, if you look at it, the paragraph that's</p> <p>18 there that's taken out is saying that Island -- if</p> <p>19 you look at paragraph 6, "I hereby acknowledge and</p> <p>20 agree that you shall not have any obligation to make</p> <p>21 any payments whatsoever to me, it being agreed and</p> <p>22 understood that I shall look solely to producer for</p>
<p style="text-align: right;">Page 159</p> <p>1 Q This is part of a document that you're</p> <p>2 signing and giving to Island Records, right, a letter</p> <p>3 of inducement from the four members of the band to</p> <p>4 Island Records, correct?</p> <p>5 A Correct.</p> <p>6 Q Okay. And then the language I just read is</p> <p>7 part of what you're telling them in this letter,</p> <p>8 correct? Did I misread the paragraph -- the language</p> <p>9 that I just read into the record, Mr. Avery?</p> <p>10 A No.</p> <p>11 Q Okay.</p> <p>12 A This is the agreement that I signed.</p> <p>13 Q Okay. That's fair enough. And you go on</p> <p>14 in paragraph B right below that and say that "All of</p> <p>15 producer's warranties, representations, covenants,</p> <p>16 and agreements contained in the production agreement</p> <p>17 which concern me are true and correct."</p> <p>18 Do you see that language?</p> <p>19 A I have to back up for a minute. I said</p> <p>20 that this is the agreement I signed. I again say</p> <p>21 that there's an error in this agreement, and I recall</p> <p>22 telling our lawyer to take that out. And so I can't</p>	<p style="text-align: right;">Page 161</p> <p>1 any and all royalties, recording fees, and other</p> <p>2 monies that will be payable to me."</p> <p>3 Do you see that language? I don't need to</p> <p>4 read the rest, but do you see that?</p> <p>5 A I see it.</p> <p>6 Q And in fact, the reason that was struck out</p> <p>7 is because you reached a separate agreement which was</p> <p>8 memorialized in a separate document that Island would</p> <p>9 pay you directly because you didn't want to be -- to</p> <p>10 take the risk of getting your money through Maxx</p> <p>11 Kidd; isn't that correct?</p> <p>12 A I don't know if that's correct, the way you</p> <p>13 stated it.</p> <p>14 Q Okay. It's a fact, is it not, that Island</p> <p>15 agreed with you in a separate document that they</p> <p>16 would pay you directly, and that that is why this</p> <p>17 language was taken out, and that the parties</p> <p>18 initialed it and took it out of the agreement; isn't</p> <p>19 that correct?</p> <p>20 A We signed this to get paid directly from</p> <p>21 Island, that is correct.</p> <p>22 Q Okay. But I'm saying something more than</p>

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<p style="text-align: right;">Page 162</p> <p>1 that. This agreement, if it wasn't struck out, would</p> <p>2 have said that you didn't have a right to get paid</p> <p>3 directly, correct?</p> <p>4 A Correct.</p> <p>5 Q And you didn't want that, correct?</p> <p>6 A Correct.</p> <p>7 Q You didn't want to have to chase Maxx Kidd</p> <p>8 down to get your money, correct?</p> <p>9 A I don't -- I don't agree to what you just</p> <p>10 said.</p> <p>11 Q Whether you agree with it or not, isn't it</p> <p>12 a fact that Island agreed to take that out, and</p> <p>13 signed a separate document with you providing that</p> <p>14 they would pay you directly?</p> <p>15 A Island signed a letter of inducement saying</p> <p>16 that they would pay us directly.</p> <p>17 Q Okay. But my question -- that's true too.</p> <p>18 But my question to you is, didn't they sign a</p> <p>19 separate document in addition to this providing that</p> <p>20 they would pay you directly, and the percentages that</p> <p>21 they would pay you?</p> <p>22 A I'm confused about -- which separate</p>	<p style="text-align: right;">Page 164</p> <p>1 asking you a different question. Isn't it in fact</p> <p>2 the case that in addition to both of you people</p> <p>3 signing the letter of inducement, that there was a</p> <p>4 signed document that provided for the direct payment</p> <p>5 from Island to you of your royalties?</p> <p>6 Let me back up a minute. Is it your</p> <p>7 testimony under oath, 30 years later, that there was</p> <p>8 a later version of this letter of inducement that was</p> <p>9 signed which had a different paragraph in it that</p> <p>10 said that you were going to get paid directly by</p> <p>11 Island?</p> <p>12 MR. TALCOTT: I object to the form.</p> <p>13 A I don't understand what you're asking.</p> <p>14 BY MR. BART:</p> <p>15 Q I want to make sure I understand what</p> <p>16 you're testifying. You agreed that -- several times,</p> <p>17 that you signed this letter of inducement, correct?</p> <p>18 A I signed a letter of inducement, yes.</p> <p>19 Q No, that you signed the page that is page</p> <p>20 31 of this document, correct?</p> <p>21 A Correct. Correct.</p> <p>22 Q And that you recognized that when you made</p>
<p style="text-align: right;">Page 163</p> <p>1 document are you referring to now?</p> <p>2 Q I'm asking as to whether you have a</p> <p>3 recollection of there being a separate document</p> <p>4 signed by the parties that -- pursuant to which</p> <p>5 Island said that.</p> <p>6 A Could you point that document out, please?</p> <p>7 Q Okay. I will, but my first question to you</p> <p>8 is, do you have a memory -- this is a deposition of</p> <p>9 your memory, Mr. Avery. And so the question is --</p> <p>10 and I grant you it's 30 years later and some of these</p> <p>11 questions are hard, but that's what happens when</p> <p>12 cases are brought on claims from 30 years ago.</p> <p>13 But isn't it a fact that after the</p> <p>14 execution of this letter of inducement by you and</p> <p>15 Island, that there was a separate letter agreement</p> <p>16 signed by the parties which provided expressly that</p> <p>17 you would get paid directly from Island and how much</p> <p>18 money you would get?</p> <p>19 A Yes. This letter of inducement.</p> <p>20 Q No, in addition to -- I said after the</p> <p>21 execution -- I agree with you, the letter of</p> <p>22 inducement was signed, and it provides that. But I'm</p>	<p style="text-align: right;">Page 165</p> <p>1 changes in documents, you crossed them through and</p> <p>2 you initialed them, correct? And that's what</p> <p>3 happened here, to reflect that you were signing it</p> <p>4 subject to that change, correct?</p> <p>5 A I recall these strikeouts, yes. And I also</p> <p>6 recall that we told him to take out Tisdale Funk. I</p> <p>7 recall that.</p> <p>8 Q Well, you told him to do that, and you put</p> <p>9 a cross-out through here, and initialed it to</p> <p>10 indicate that you were signing it subject to that</p> <p>11 deletion, correct?</p> <p>12 MR. TALCOTT: Objection to form.</p> <p>13 A I recall this Tisdale Funk being corrected.</p> <p>14 And that was the document that I signed. I recall</p> <p>15 that.</p> <p>16 BY MR. BART:</p> <p>17 Q Really? Do you have a copy of that?</p> <p>18 A No, I don't have it.</p> <p>19 Q Does anybody have a copy of it?</p> <p>20 A I don't know.</p> <p>21 Q Is it your testimony under oath 30 years</p> <p>22 later that there is a different copy of this</p>

<p style="text-align: right;">Page 166</p> <p>1 agreement that was signed that has different language</p> <p>2 in it other than paragraph 6 that relates to your</p> <p>3 payment?</p> <p>4 A I -- say the question again.</p> <p>5 Q I'm asking you, you said that you signed a</p> <p>6 document, the letter of inducement, that provided</p> <p>7 that you were going to get paid directly by Island.</p> <p>8 A Correct.</p> <p>9 Q Okay. You agree with me, do you not, that</p> <p>10 there's nothing in this exhibit that you have in</p> <p>11 front of you that says that you're going to be paid</p> <p>12 directly by Island, correct? This copy. This</p> <p>13 document that you're looking at that's Exhibit 3. Is</p> <p>14 there anything in here that says that they're going</p> <p>15 to pay you directly?</p> <p>16 In fact, there's a provision that says</p> <p>17 they're not going to pay you directly which was</p> <p>18 crossed out, correct?</p> <p>19 A Correct.</p> <p>20 Q Okay. It's not your testimony, is there,</p> <p>21 that there was a subsequent version of this agreement</p> <p>22 that you signed that provided that they were going to</p>	<p style="text-align: right;">Page 168</p> <p>1 requiring Island to pay you directly, are you?</p> <p>2 A No.</p> <p>3 Q Okay. And is there anything in this</p> <p>4 agreement in Exhibit 3 that you contend is erroneous</p> <p>5 or false in any way other than the mistaken reference</p> <p>6 in one of the five times the band's name is mentioned</p> <p>7 in paragraph 8 to Tisdale Funk instead of Trouble</p> <p>8 Funk?</p> <p>9 A That's the only thing that I can recall.</p> <p>10 Q Now, what I was trying to ask you before is</p> <p>11 that you and other members of the band expressed to</p> <p>12 Island by crossing off and initialing this signed</p> <p>13 copy of the agreement, that you were not willing to</p> <p>14 agree that they didn't have to pay you directly,</p> <p>15 correct?</p> <p>16 A "They" being who?</p> <p>17 Q Island. That your approval and signing of</p> <p>18 this agreement was subject to the fact that this</p> <p>19 provision had to be taken out, that the provision</p> <p>20 saying that Island doesn't have to pay you directly</p> <p>21 was something that you were rejecting and indicating</p> <p>22 that by crossing it off and initialing it, correct?</p>
<p style="text-align: right;">Page 167</p> <p>1 pay you directly, is there?</p> <p>2 A Subsequent...</p> <p>3 Q Yes. You're not testifying that the</p> <p>4 document that you signed that was the letter of</p> <p>5 agreement had an express provision in it saying that</p> <p>6 they were going to pay you directly?</p> <p>7 A You mean the letter of inducement?</p> <p>8 Q Yes.</p> <p>9 A I don't recall. I don't recall.</p> <p>10 Q And in fact, there was a document in which</p> <p>11 Island agreed to pay you directly, but it wasn't a</p> <p>12 letter of inducement, it was a document that was</p> <p>13 signed by the parties two months later; isn't that</p> <p>14 correct?</p> <p>15 A I don't -- I don't know. Two months later?</p> <p>16 Q Yes. It's nothing that's in front of you.</p> <p>17 This is not a quiz on something that you have in</p> <p>18 front of you.</p> <p>19 A I don't recall.</p> <p>20 Q Okay. So my question to you is, you're not</p> <p>21 testifying under oath here today that the letter of</p> <p>22 inducement that you signed has a provision in it</p>	<p style="text-align: right;">Page 169</p> <p>1 A Yes.</p> <p>2 Q Okay. And Island agreed with you, correct?</p> <p>3 A Yes. We were paid directly from Island.</p> <p>4 Q And not only did they agree because you</p> <p>5 were paid, but in fact, Island agreed in a separate</p> <p>6 letter agreement with you that they would pay you</p> <p>7 directly, didn't they? Or don't you have any</p> <p>8 recollection? You just have no recollection?</p> <p>9 A I just don't -- I can't -- I don't know</p> <p>10 what the letter says. I don't recall it.</p> <p>11 MR. BART: Let me mark as whatever the next</p> <p>12 number is, 13.</p> <p>13 (Defendants' Exhibit 13 was marked for</p> <p>14 identification and attached to the deposition</p> <p>15 transcript.)</p> <p>16 BY MR. BART:</p> <p>17 Q Mr. Avery, I put in front of you a document</p> <p>18 that was produced in discovery in this action.</p> <p>19 A Okay.</p> <p>20 Q Bearing Bates stamp numbers UMG 172 and</p> <p>21 173.</p> <p>22 A Mm-hmm.</p>

<p style="text-align: right;">Page 194</p> <p>1 A I don't know.</p> <p>2 MR. BART: Why don't we take a couple of</p> <p>3 minute break so I can see if I can condense down what</p> <p>4 I have left.</p> <p>5 THE VIDEOGRAPHER: Going off the record.</p> <p>6 The time is 4:08.</p> <p>7 (Recessed at: 4:08 p.m.)</p> <p>8 (Reconvened at: 4:16 p.m.)</p> <p>9 THE VIDEOGRAPHER: Back on the record. The</p> <p>10 time is 4:16.</p> <p>11 BY MR. BART:</p> <p>12 Q Mr. Avery, there came a time when you and</p> <p>13 the other members of Trouble Funk terminated your</p> <p>14 agreement with Island; isn't that correct?</p> <p>15 A I'm not sure if we terminated or Island</p> <p>16 terminated. I don't recall.</p> <p>17 Q Okay. There was a termination agreement</p> <p>18 that was signed between the parties; is that true?</p> <p>19 A I don't recall it. I would like to see a</p> <p>20 copy of it, because I just don't recall the</p> <p>21 termination agreement.</p> <p>22 Q That's not one of the documents that you</p>	<p style="text-align: right;">Page 196</p> <p>1 A Okay.</p> <p>2 Okay.</p> <p>3 Q Now, you'll see at the top, after the</p> <p>4 initial portion, it says, "Gentlemen: Reference is</p> <p>5 made to the agreements dated October 11th, 1984,</p> <p>6 between you and us (the agreements)." Do you see</p> <p>7 that language?</p> <p>8 A Yes.</p> <p>9 Q And you understand that to be a reference</p> <p>10 to Exhibits 2, 3, and 4 that we've been talking about</p> <p>11 today, correct?</p> <p>12 A I assume that, yes.</p> <p>13 Q Okay. Now, as of that time, in 1989, did</p> <p>14 the members of the band have any ongoing relationship</p> <p>15 with Mr. Kidd?</p> <p>16 A No.</p> <p>17 Q When did that -- I'm sorry?</p> <p>18 A That I can recall, no.</p> <p>19 Q When did that relationship end? When did</p> <p>20 you stop having any -- I mean, you clearly were still</p> <p>21 working with him in the In Times of Trouble and in</p> <p>22 1984, around the times of these agreements. When did</p>
<p style="text-align: right;">Page 195</p> <p>1 produced here today, correct?</p> <p>2 A No, I don't have that.</p> <p>3 Q And have you seen a termination agreement?</p> <p>4 A No.</p> <p>5 MR. BART: Let me mark as Exhibit 17.</p> <p>6 (Defendants' Exhibit 17 was marked for</p> <p>7 identification and attached to the deposition</p> <p>8 transcript.)</p> <p>9 BY MR. BART:</p> <p>10 Q Mr. Avery, I've put in front of you a</p> <p>11 document that is Bates stamped UMG 149 to 151.</p> <p>12 A Okay.</p> <p>13 Q First, I'm just going to ask you to confirm</p> <p>14 that the signature on page 3 is your signature.</p> <p>15 A Yes.</p> <p>16 Q We've seen it often enough that it's pretty</p> <p>17 clear by now. And do you recall this agreement?</p> <p>18 A I don't recall it right now. Can I read</p> <p>19 it?</p> <p>20 Q Yes, of course.</p> <p>21 A Okay.</p> <p>22 Q You let me know when you're ready.</p>	<p style="text-align: right;">Page 197</p> <p>1 the relationship between the band and -- working</p> <p>2 relationship between the band and Mr. Kidd stop?</p> <p>3 A I don't know exactly. But very soon</p> <p>4 after -- after the -- after the Trouble Over Here,</p> <p>5 Trouble Over There album.</p> <p>6 Q Okay. The one that we -- this Exhibit 16?</p> <p>7 A No. The cover of that album is not</p> <p>8 included in this package.</p> <p>9 Q Okay. One second. Well, the Trouble Over</p> <p>10 Here, Trouble Over There album, at least according to</p> <p>11 the discographies, came around 1987. You may or may</p> <p>12 not have any personal recollection about that. But</p> <p>13 what was it about that record that you can tie the</p> <p>14 end of the relationship with Mr. Kidd to that? How</p> <p>15 do you know it was shortly after that time?</p> <p>16 A Repeat the question again.</p> <p>17 Q The question was, when did the relationship</p> <p>18 between the band and Mr. Kidd stop?</p> <p>19 A It may have been sooner. It may have been</p> <p>20 during the movie time, because we were misrepresented</p> <p>21 to Island on the records, via Maxx Kidd.</p> <p>22 Q What does that mean? What do you mean by</p>

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<p style="text-align: right;">Page 198</p> <p>1 when you say we were misrepresented to Island, the 2 records? I don't understand.</p> <p>3 A He told Island Records that he had all the 4 go-go bands signed to this label, and we had not 5 signed to this label, in his negotiation with 6 Trouble -- with Island Records.</p> <p>7 Q When you say that he told Island Records 8 that he had all of the bands signed to his label, you 9 had an agreement with his label, correct?</p> <p>10 A Not at that time.</p> <p>11 Q So this is before the time of the 1984 12 agreements that we've been looking at?</p> <p>13 A Correct.</p> <p>14 Q Okay. So he told everybody, he told Island 15 that he had rights to these bands before he actually 16 had the rights to the bands?</p> <p>17 A That's correct.</p> <p>18 Q But you didn't find out about that until 19 later?</p> <p>20 A Until Island Records came to visit 21 Washington, DC.</p> <p>22 Q And when was that? When they did the</p>	<p style="text-align: right;">Page 200</p> <p>1 directly. This was before we signed the agreement.</p> <p>2 Q Okay. So they told you that you couldn't 3 sign directly because they had an agreement with Maxx 4 Kidd, and so you wound up signing indirectly through 5 Maxx Kidd anyway, correct?</p> <p>6 A Through T.T.E.D. Records.</p> <p>7 Q Through T.T.E.D.?</p> <p>8 A Through T.T.E.D. Records, yes.</p> <p>9 Q But that left a bad taste in your mouth 10 because of that?</p> <p>11 A Correct.</p> <p>12 Q So even though you signed with Island, at 13 that point, you didn't trust him anymore and you 14 didn't want to have any further dealings with him?</p> <p>15 A Correct.</p> <p>16 Q Okay. Fair enough. Now, were you still 17 represented by Mr. Tisdale at the time that you 18 signed this termination agreement, Exhibit 17?</p> <p>19 A No.</p> <p>20 Q Who was your counsel at this point?</p> <p>21 A I did not have counsel at that point.</p> <p>22 Q Did the other members of the band have</p>
<p style="text-align: right;">Page 199</p> <p>1 movie, do you mean?</p> <p>2 A I don't remember the exact date when that 3 happened.</p> <p>4 Q But you said it was in connection with the 5 Island movie. Is that when Island came to 6 Washington, DC?</p> <p>7 A I don't remember the exact date. I just 8 recall that as being one of the problems.</p> <p>9 Q Okay. Do you have recollection -- all of 10 this that you're talking about happened after the 11 agreements in 1984, though, correct?</p> <p>12 A No.</p> <p>13 Q Okay. Well, you couldn't have broken your 14 relationship with Maxx Kidd when you signed 15 agreements with him after that date, could you?</p> <p>16 A You said all of this happened. And I said 17 that before the signing with Island Records, that, 18 you know, that he had told them that we were signed, 19 and I said that we were not signed, we had talked to 20 Island about that because we wanted to sign to Island 21 directly. But Island said they had their own 22 agreement with Maxx Kidd and we could not sign</p>	<p style="text-align: right;">Page 201</p> <p>1 counsel?</p> <p>2 A I don't know.</p> <p>3 Q Well, it says on the agreement itself, 4 "Care of Joseph Lloyd Serling, Esq., 10 Columbus 5 Circle, New York, New York"; do you see that?</p> <p>6 A Yes.</p> <p>7 Q And because it says "Esq.," he's a lawyer. 8 Do you know who Mr. Serling was?</p> <p>9 A No.</p> <p>10 Q But he was a lawyer, at least on this 11 agreement, identified as being affiliated with you, 12 correct? Not you personally, but the four of you, 13 right? It's addressed to the four members of the 14 band, care of Mr. Serling, correct?</p> <p>15 A Correct.</p> <p>16 Q And you received a copy of this, and you 17 signed it, correct?</p> <p>18 A Correct.</p> <p>19 Q Okay. Do you have any memory of the terms 20 of the agreement independent of what it says on the 21 page?</p> <p>22 A No.</p>

<p style="text-align: right;">Page 202</p> <p>1 Q Now, you said earlier today, we had a very</p> <p>2 brief conversation about composition copyrights, that</p> <p>3 you were familiar with a company called Hugabut</p> <p>4 Music. Do you recall that?</p> <p>5 A I think that name came out of the song</p> <p>6 that's on the album, Taylor Reed wrote, and it was</p> <p>7 just Hugabut. That's the only thing I can recall</p> <p>8 about it now.</p> <p>9 Q Okay. Bear with me one second. You</p> <p>10 produced at the beginning of this deposition two</p> <p>11 composition copyrights that were registered in 1986</p> <p>12 for Say What and Let's Get Small. I'll put them in</p> <p>13 front of you. They're Exhibits 5 and 6. Let's look</p> <p>14 at the one for Let's Get Small first.</p> <p>15 A Okay.</p> <p>16 Q Okay?</p> <p>17 A Okay.</p> <p>18 Q And which one is that, which exhibit number</p> <p>19 is that?</p> <p>20 A It says 5.</p> <p>21 Q Okay. Now, this is a copyright submission</p> <p>22 for the musical composition Let's Get Small, correct?</p>	<p style="text-align: right;">Page 204</p> <p>1 interest by agreement with Tony Fisher, Robert Reed,</p> <p>2 and James Avery."</p> <p>3 Do you see that?</p> <p>4 A Yes, I see it. It says "continued."</p> <p>5 Q And the continued is at the end of the back</p> <p>6 page.</p> <p>7 A End of the back --</p> <p>8 Q Page 155.</p> <p>9 A Mm-hmm.</p> <p>10 Q Where it goes on to say, "Maxx Kidd's Music</p> <p>11 acquired its interest by agreement with Hugabut</p> <p>12 Music"; do you see that?</p> <p>13 A Yes.</p> <p>14 Q "And Ackee Music acquired its interest by</p> <p>15 agreement with Maxx Kidd's Music." Do you see that?</p> <p>16 A Yes.</p> <p>17 Q So the transfers here are from you,</p> <p>18 Mr. Fisher, and Mr. Reed to Hugabut Music, from</p> <p>19 Hugabut Music to Maxx Kidd's Music, and from Mac</p> <p>20 kid's music to Ackee Music, correct?</p> <p>21 A That's what's listed on the document.</p> <p>22 Q Okay. Are you familiar with any agreement</p>
<p style="text-align: right;">Page 203</p> <p>1 A It says Form PA.</p> <p>2 Q Do you know what that means?</p> <p>3 A I think -- I guess this is a sound</p> <p>4 recording contract. I don't know.</p> <p>5 Q You don't know one way or the other?</p> <p>6 A Yes.</p> <p>7 Q Okay.</p> <p>8 A Let's see.</p> <p>9 Q Take a look at the bottom of the document.</p> <p>10 It says, "Copyright claimants." And it says "Ackee</p> <p>11 Music Inc." Have you ever heard of Ackee Music Inc.?</p> <p>12 A I've seen it on album covers. I don't know</p> <p>13 exactly -- I don't know Ackee Music Inc.</p> <p>14 Q And it says "Maxx Kidd's Music." Both have</p> <p>15 an address in Hollywood, the same address in</p> <p>16 Hollywood, California. Do you see that?</p> <p>17 A Yes, I do.</p> <p>18 Q And below that it says -- because it says</p> <p>19 that the three authors are Mr. Fisher, Mr. Reed, and</p> <p>20 you, correct?</p> <p>21 A Yes.</p> <p>22 Q And it says, "Hugabut Music acquired its</p>	<p style="text-align: right;">Page 205</p> <p>1 -- well, Hugabut was a company that -- first of all,</p> <p>2 was Hugabut Music a company?</p> <p>3 A I can't recall -- I don't recall -- all I</p> <p>4 recall is that was the name of the publishing thing,</p> <p>5 when it was registered, I think. That's all I</p> <p>6 recall.</p> <p>7 Q There's an address there too, 301 G Street.</p> <p>8 A Right.</p> <p>9 Q Whose address was that?</p> <p>10 A That's my former apartment address.</p> <p>11 Q Your former apartment address?</p> <p>12 A Yes.</p> <p>13 Q Okay. And so then there was -- hold on a</p> <p>14 second. Earlier on this morning, I showed you I</p> <p>15 think it was Exhibit -- hold on one second. Let me</p> <p>16 get the right number here so I don't get more</p> <p>17 twisted. 11. Do you have Exhibit 11 in front of</p> <p>18 you?</p> <p>19 A 10, 15, 2 -- no, I do not have Exhibit 11.</p> <p>20 Q You don't have 11? That was this</p> <p>21 co-publishing agreement.</p> <p>22 A It's not here. Is it?</p>